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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,878	10/22/2003	Artur G. Olszak	6121.061	6812
57931	7590	05/02/2006		
ANTONIO R. DURANDO 6902 N. TABLE MOUNTAIN ROAD TUCSON, AZ 85718-1331			EXAMINER FINEMAN, LEE A	
			ART UNIT 2872	PAPER NUMBER

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/690,878

Applicant(s)

OLSZAK, ARTUR G.

Examiner

Lee Fineman

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-69 is/are pending in the application.
- 4a) Of the above claim(s) 2-7, 9, 11-46, 48-53, 55 and 57-69 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 8, 10, 47, 54 and 56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/22/03 & 3/10/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

This Office Action is in response to remarks filed 10 March. Claims 1-69 are pending of which claims 2-7, 9, 11-46, 48-53, 55 and 57-69 are withdrawn.

#### *Drawings*

1. A replacement drawing for fig. 6 was received on 10 March 2006. This drawing is acceptable.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 8, 10, 47, 54 and 56 are rejected under 35 U.S.C. 102(e) as being anticipated by Boege, US 6,839,179 B2.

Regarding claims 1 and 47, Boege discloses in figs. 1-4 and 6-9 a multi-axis imaging device (10) comprising: a plurality of magnifying imaging systems (12, page 3, lines 16-20 verify that it is a magnifying system in so far as inherently the image must be magnified to see DNA segments, proteins, small molecules, etc.) disposed along a corresponding plurality of optical axes (25) for imaging a picture of an object (22) onto a detector (16); an optical relay system (13 and 15) positioned across said plurality of optical axes such that an image said object is relayed

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through the relay system (figs. 1-4 and 6-9); and light source (40 or 50, see fig. 3) illuminating the object (22) to produce said image and picture of the object (column 3, lines 49-58); wherein the light source is imaged into a plurality of pupils corresponding to said plurality of imaging systems (fig. 3b).

Regarding claims 8, 10, 54 and 56, Boege further discloses in fig. 3a further comprising a means (42) for modifying a property of a wavefront propagated through said plurality of magnifying imaging systems (column 6, lines 19-24); wherein said wavefront is an imaging wavefront (from 22) and said modifying means (42) includes an element (42) for modifying an amplitude of said imaging wavefront (column 6, lines 19-24, in so far as the dichroic mirror will change the intensity/brightness of the imaging wavefront).

### ***Response to Arguments***

4. Applicant's arguments filed 10 March 2006 have been fully considered but they are not persuasive.

Applicant argues that each channel of Boege produces a whole image/picture of a discrete portion of the object with individual significance rather than an image/picture which is a portion of a whole object that when assembled by the detector is a single image/picture of the object (see remarks page 3). The examiner respectfully disagrees for a number of reasons. First, it is noted that the feature upon which applicant relies (i.e., a single picture) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Second, It should be noted that the claims recite open-ended

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language. Thus, reliance upon the Boege reference is appropriate since this reference produces a picture of the object, even if it is one of many. Finally, the applicant is taking a very narrow definition of what the object (22) is in Boege. Clearly every cell in sample holder (11) is part of the object (22) and as such produces a single picture of the object.

Applicant further argues that the optics (13 and 15) in Boege cannot be considered an optical relay system because the system is afocal, and not a finite conjugate system (see remarks, page 5, paragraph 2). The examiner respectfully disagrees and would like to point out that on page 10, lines 11-14 of the applicant's specification it states that "a 'relay' system is intended to refer to any optical system that relays an image of an object, whether real or virtual, from a first plane onto a second plane, which may be coextensive with the first plane, including **planes located at infinity**". Therefore, the relay system of Boege is clearly appropriate as it relays an image as defined in the specification.

### *Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lee Fineman whose telephone number is (571) 272-2313. The examiner can normally be reached on Monday - Friday 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LAF  
April 24, 2006



MARK A. ROBINSON  
PRIMARY EXAMINER